



Criminal Defense Attorneys of Michigan

P.O. Box 18098, Lansing, MI 48901-8098 • 517-579-0533 • www.cdamonline.org

OFFICERS:

James R. Samuels
President
Penny R. Beardslee
First Vice President
Patricia A. Maceroni
Second Vice President
Beth LaCrosse,
Secretary
Steven I. Moss,
Treasurer
Margaret Sind Raben,
Immediate Past President

BOARD MEMBERS:

Lynn D'Orio
Robyn Frankel
Stuart G. Friedman
Rhonda B. Ives
Thomas M. Loeb
Karl P. Numinen
Lisa Kirsch-Satawa
Barbara A. Klimaszewski
Elizabeth A. LaCrosse
Tat Parish
Marjorie P. Russell
Mark A. Satawa
Nicole L. Smith
Michael L. Steinberg
Richard D. Stroba
William W. Swor
Dawn Van Hoek
Rafael Villarruel
Robert S. Whims

EXECUTIVE DIRECTOR

Yvonne K. Fleener

EDUCATION DIRECTOR:

F. Randall Karfonta

September 30, 2010

Mr. Corbin Davis
Clerk of the Michigan Supreme Court
P.O. Box 30052
Lansing, MI 48909

RE: ADM File #: 2010-16
Proposed Amendments of Rule 6.302 and 6.610

Dear Mr. Davis:

On behalf of the Criminal Defense Attorneys of Michigan (CDAM), I write to comment on the proposed amendments to MCR 6.302 and 6.610. Each of the proposed amendments is an attempt to address the holding in *Padilla v. State of Kentucky*, 130 S Ct 1473 (2010), in which the Supreme Court held that defense counsel is required to investigate, research, and affirmatively advise a non-citizen defendant about the likelihood of deportation as a consequence of a guilty plea.

As to the two Alternatives presented for comment, CDAM joins the comments expressed by Jim Neuhard as Director of the State Appellate Defender Office, and prefers Alternative B if one of the two presented alternatives must be chosen. CDAM also offers these additional comments.

First, the lesson of *Padilla* is that the defense attorney is obliged to investigate the consequences of a plea or conviction for a particular offense on the immigration status of a non-citizen client and affirmatively advised the client of those consequences. That obligation permeates the representation of a non-citizen client from the beginning of the attorney's efforts. Nothing a judge says during a plea colloquy about possible immigration consequences can or will substitute for the attorney's individualized determination and advice to her client. This Court could rationally conclude that no advice from a judge is necessary or appropriate. Unfortunately, even after *Padilla*, there will continue to be attorneys representing defendants in criminal matters who do not know or understand the responsibilities imposed by *Padilla* and who will advise or permit a non-citizen defendant to enter a guilty plea without any consideration of the immigration consequences. For this reason, CDAM acknowledges that some information from the judge about the possibility of immigration consequences is in the best interests of the non-citizen defendant and should be part of the plea colloquy.



Criminal Defense Attorneys of Michigan

P.O. Box 18098, Lansing, MI 48901-8098 • 517-579-0533 • www.cdamonline.org

OFFICERS:

James R. Samuels
President
Penny R. Beardslee
First Vice President
Patricia A. Maceroni
Second Vice President
Beth LaCrosse
Secretary
Steven I. Moss,
Treasurer
Margaret Sind Raben,
Immediate Past President

BOARD MEMBERS:

Lynn D'Orio
Robyn Frankel
Stuart G. Friedman
Rhonda B. Ives
Thomas M. Loeb
Karl P. Numinen
Lisa Kirsch-Satawa
Barbara A. Klimaszewski
Elizabeth A. LaCrosse
Tat Parish
Marjorie P. Russell
Mark A. Satawa
Nicole L. Smith
Michael L. Steinberg
Richard D. Stroba
William W. Swor
Dawn Van Hoek
Rafael Villarruel
Robert S. Whims

EXECUTIVE DIRECTOR

Yvonne K. Fleener

EDUCATION DIRECTOR:

F. Randall Karfonta

Second, the language of paragraph (2) of Alternative B will be, in any particular case, misleading if not actually inaccurate, and may well conflict with the correct immigration analysis for the particular defendant. If a defense attorney has performed with due diligence, as required under *Padilla*, and determined the immigration consequences of a plea to a particular offense and counseled and advised her defendant, the language in (2) of Alternative B may do nothing more than confuse the defendant and raise doubts where none should exist. In addition, the provision in (2) of Alternative B which states: "Upon request, the court shall allow the defendant a reasonable amount of time to consider the appropriateness of the plea" raises the question of a "request" by whom? CDAM suggests that it is more appropriate for the court to simply ask the defendant if she requires additional time to consult with her attorney in light of the advisement.

Third, Justice Markman has expressed his view that the *Padilla* advisory be limited to non-citizens to avoid "an enormous waste of time and resources." CDAM disagrees. Trial courts routinely advise a defendant that if she is on probation or parole, a plea may affect that status, regardless of whether or not the trial court knows that the particular defendant is on probation or parole. This routine statement during the plea colloquy does not appear to appreciably waste time or resources and facilitates a knowing, understanding and voluntary plea. For this reason, the *Padilla* advisement, which under Alternative B would be part of the plea colloquy for all defendants, would also not waste any appreciable time and resources.

Thank you for your consideration of these comments and for the opportunity to provide them.

Respectfully submitted,

Margaret Sind Raben
CDAM Rules and Laws Committee

/kad